

the person, and the continued need for a guardian and/or conservator. [RSMo 475.082]

What are the duties of a Guardian and a Conservator?

A **Guardian** must always act in the best interest of the person (“ward”) and make decisions relative to the ward’s care, treatment, shelter, education, support and maintenance. A guardian must assure that the ward resides in the least restrictive setting reasonably available and receives all medical care which he or she may need. A guardian may give necessary legal consent for the ward’s treatment. However, a guardian may not admit the ward to a mental health facility for more than 30 days without a court order. A guardian must report to the court, at least annually, on the ward’s physical condition. [RSMo 475.120]

A **Conservator**, under the supervision of the court, is responsible for the protection and management of the person’s (“protectee’s”) financial estate. The conservator must properly and prudently invest the protectee’s assets, apply such assets for the protectee’s care and maintenance, and account for all funds received and expended on behalf of the protectee. Because of the strict accounting requirements, the conservator must administer the protectee’s estate properly, no matter how large or small it may be. [RSMo 475.130]

How is a Guardianship and / or Conservatorship terminated?

[RSMo 475.083]

The authority may end when the court finds that the person has been restored to capacity or ability. It may also be terminated if the court determines the Guardian or Conservator are not following the duties and responsibilities required by law. Anyone, including the incapacitated or disabled

person or someone on their behalf may, at anytime, petition the court for a change in who is Guardian/ Conservator, or to increase or decrease the powers outlined in the letters of Guardianship or Conservatorship. Authority is also terminated upon the death of the person.

What happens in the case of an emergency?

[RSMo 475.123; 475.355; 475.075]

If an allegedly incapacitated person faces an emergency involving substantial risk to life, health or safety, the court may appoint a Guardian Ad Litem for a specific period of time. A Conservator Ad Litem may be appointed to deal with an emergency where irreparable damage may occur to an allegedly disabled person’s property or estate.

For More Information

The Missouri Bar www.mobar.org/pamphlet/guardian.htm

Missouri Protection & Advocacy 1-800-392-8667

Center for Practical Bioethics* 1-800-344-3829

*(for consultations on complex health care situations)

National Guardianship Association www.guardianship.org

Missouri Revised Statutes: Chapter 475

Probate Code - Guardianship

www.moga.state.mo.us/STATUTES/C475.HTM

Alternatives to Guardianship and Conservatorship

Power of Attorney; Durable Power of Attorney; Durable Power of Attorney for Healthcare, are not court appointed, but may also fulfill needs. Also consider: Living Wills and Advance Directives.



Use caution and consult an attorney when preparing any of the documents discussed in this brochure.

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Guardianship and Conservatorship in Missouri Questions & Answers



Missouri Department of Health & Senior Services

Division of Senior and Disability Services
1-800-235-5503

Missouri Long-Term Care Ombudsman Program

PO Box 570

Jefferson City, MO 65102

1-800-309-3282

The Long-Term Care Ombudsman
Program advocates for Resident Rights
in long-term care facilities.

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What is a Guardian?

A guardian is a person who has been appointed by a court (usually the probate division of the circuit court) to have the care and custody of a minor or of an adult person who has been legally determined to be **incapacitated**.

What is meant by Guardianship?

Guardianship is a legal process which protects an **incapacitated** person: “one who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that he [or she] lacks capacity to meet essential requirements for food, clothing, shelter, safety or other care such that serious physical injury, illness, or disease is likely to occur.” [RSMo 475.060]

What is a Conservator?

A conservator is a person or a corporation, such as a bank or trust company, appointed by a court (again, usually the probate division of the circuit court) to manage the property of a minor or of an adult person who has been legally determined to be **disabled**.

What is meant by Conservatorship?

Conservatorship protects the rights of those individuals who are unable to manage their financial resources due to being a **disabled** person: “one who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that the person lacks ability to manage his [or her] financial resources.” [RSMo 475.061]

Who may serve as Guardian or Conservator? [RSMo 475.50]

The court considers suitability before appointment.

Any eligible person named in writing when the incapacitated or disabled person was capable of making and communicating a reasonable choice (within five years prior to the hearing).

The incapacitated or disabled person’s choice of Guardian or Conservator is given priority consideration, provided that choice is reasonable and the nominee is eligible to serve.

Court will consider in order: Spouse, parents, adult children, brothers and sisters, and other close adult relatives of the incapacitated or disabled person. Any other eligible person, including Public Administrators, and persons living out of state.

Who may *not* serve as Guardian or Conservator? [RSMo 475.055]

Certain corporations, social service agencies, court employees, administrators, owners, operators, managers, or employees of facilities licensed by the state, shall not be appointed guardian or conservator (unless for their own family). For more information see RSMo 475.055.

How is Guardianship / Conservatorship established? [RSMo 475.075; 475.085]

The process begins when a “petitioner” files an application for the appointment of a Guardian and/or Conservator in the probate division of the circuit court in the county in which the alleged incapacitated or disabled person (the “respondent”) resides. Cost of proceedings shall be paid from respondent’s estate if found incapacitated or disabled, if estate is insufficient, costs shall be paid by the county.

If respondent is not found to be incapacitated or disabled, costs shall be paid by petitioner.

After application is filed, the court will set a date for a hearing. Notice of the application must be served: upon the respondent; his or her spouse, parents, children or other close relatives over the age of 18 years; any person acting in a representative capacity with respect to any of the respondent’s financial resources; and any person having care and custody of the respondent.

The petitioner and the respondent must be represented by attorneys. The court will appoint an attorney for the respondent if they cannot afford an attorney. The attorney must visit with the respondent prior to the scheduled hearing to exchange information that would safeguard and protect the interests of the respondent.

At the court hearing, the petitioner must meet a burden of proof to demonstrate the respondent needs a Guardian or Conservator. The judge will make a decision on the capabilities of the respondent, and rule on the degree of supervision necessary for the protection of the respondent. The court’s decision will allow for the greatest amount of personal liberty and freedom possible, and depends on whether the respondent is found to have a **partial** or **total** incapacity or disability. The court issues letters appointing either full or limited Guardianship and/or Conservatorship.

What happens after Guardianship or Conservatorship are established?

An annual review by the probate court is required to assure the guardian/conservator is functioning properly, and to assure the incapacitated and/or disabled person remains in the least restrictive environment, and that funds are being used appropriately. The court also reviews the status of